

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

JANIE L. KINSEY and C.H. KINSEY,

Plaintiffs,

v.

C. LANCE GOULD, et al.,

Defendants.

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Case No.: 2:05-cv-636-F

DEFENDANTS' RESPONSE TO COURT'S JULY 20, 2006 ORDER

COME NOW Defendants CitiFinancial Corporation, LLC and TranSouth Financial Corporation, n/k/a CitiFinancial Auto Corporation, (or collectively "Defendants"¹), appearing specially and specifically reserving their defenses under the applicable rules of civil procedure, any and all defenses under the federal laws of bankruptcy, and the right to demand arbitration pursuant to contractual agreements and the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.*, and hereby respond to the Court's July 20, 2006 Order (the "Order") by showing that default should not be entered against Defendants because Defendants were not properly served with Plaintiffs' complaint; they were not served with this Court's Order; and they only became aware of the Court's Order by counsel for Defendants checking this Court's PACER system on August 7, 2006 before filing Defendants' Motion to Quash and Dismiss.

1. Plaintiffs Janie L. Kinsey and C.H. Kinsey filed this lawsuit on July 7, 2005 against C. Lance Gould (their former attorney), J. King, and Defendants "CitiFinancial," "Associates" and "Transouth."

¹ At the time Plaintiffs attempted service on Defendant Associates Financial Life Insurance Company, it was no longer in business.

2. Plaintiffs failed to serve Defendants within 120 days of filing their complaint, as required by Rule 4(m).

3. Plaintiffs first attempted service on Defendants almost 1 year after they filed suit - on June 28, 2006.

4. Plaintiffs' attempted service of Defendants on June 28, 2006 was improper, as they served a summons and complaint on an employee in a local CitiFinancial branch in Dothan, Alabama. The employee served (Shaun Hawthorne) is not an officer of CitiFinancial; she is not a managing or general agent of CitiFinancial; she is not a partner in CitiFinancial; and she is not otherwise authorized by appointment or by law to receive service of process on behalf of CitiFinancial. *See* FED. R. CIV. P. 4(h)(1); ALA. R. CIV. P. 4(c)(6).

5. Because the summons and complaint were not received by persons authorized to take action on behalf of Defendants, counsel for Defendants did not have an opportunity to serve a responsive pleading within 20 days of the improper service.

6. Moreover, Defendants were not served with this Court's July 20, 2006 Order, which this instant pleading responds to. Counsel for Defendants only became aware of the Court's July 20, 2006 Order by checking this Court's PACER system on August 7, 2006. Upon discovering the Court's July 20, 2006 Order, Defendants filed the same day their Motion to Quash and Dismiss, and they now file this response to the Court's July 20, 2006 Order.

WHEREFORE, for all of the above reasons, Defendants respectfully submit that default judgment should not be entered against them.

Respectfully submitted,

/s/ Reid S. Manley
Reid S. Manley
Elizabeth B. Shirley
Attorneys for Defendants

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rmanley@burr.com**CERTIFICATE OF SERVICE**

I hereby certify that on August 8, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, and served the plaintiffs, appearing *pro se*, via First Class United States Mail, postage prepaid:

Janie L. Kinsey

C.H. Kinsey

420 County Road 250

Headland, Alabama 36345

/s/ Reid S. Manley

OF COUNSEL